

Thompson, Fred

From: Thompson, Fred
Sent: Wednesday, March 24, 2010 12:51 PM
To: 'Moriarty, Matthew'
Cc: Carl N. Frankovitch
Attachments: Digitek Settlement Proposal-DRAFT 3-24-2010.doc

matt
here is a proposed structure for our discussions...of course no bullet is non-negotiable
i suggest a meeting soon-- this week or next monday if you are available
fred

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SETTLEMENT PROPOSAL OUTLINE

This document is intended to serve as a vehicle by which the parties can assign value to individual claims. Critical to the success of this proposal is the inclusion of all claims in a Serzone style class action, which is the best way to roll up all unbrought claims.

SETTLEMENT FACTORS

Proof of Digitek use:

- Medical record
- Pharmacy record
- Recall notice
- Sample (appearing from medical record or affidavit of provider)
- Affidavit of use

Proof of Digitek-related injury:

- Lab result
- Diagnosis
- Symptomatology of digoxin toxicity evidenced in medical record

Type of Digitek-related injury:

- Death
- Myocardial Infarction
- Kidney dysfunction, impairment or failure
- Congestive Heart Failure
- Atrial Fibrillation
- Bradycardia
- Transient symptoms—nausea/vomiting/lightheadedness/vision disturbances/anorexia
- Other physical injury
- Economic injury

Degree of injury:

- Category 1: Death with extensive medical specials
- Category 2: Death
- Category 3: Event with permanent impairment and/or effect on activities of daily living
- Category 4: Hospitalization more than three (3) days and/or event with recovery
- Category 5: Hospitalization less than three (3) days and/or event with recovery

- Category 6: Kidney event, new; Congestive Heart Failure, new, in patients prescribed Digitek for condition other than congestive heart failure
- Category 7: Kidney event, worsening of existing symptoms and/or transient symptom event

Points:

Each category to be assigned matrix value. To each value, an enhancement or deduction to be added as follows:

Enhancements/deductions:

Age:

- Under 50
- Under 60
- Under 70
- Under 80
- 80+

Loss of consortium/minor children/dependents

Risk Factors (only for MI cases):

- Prior myocardial infarction, other heart condition for which hospitalization, intervention, or treatment was initiated
- Family cardiac history
- Diabetes – controlled/uncontrolled
- Cholesterol – controlled/uncontrolled
- Smoking

Claims values: (Trial cases to be evaluated separately)

- Death
- Death with high medical specials
- Hospitalization with permanent impairment or effect on activities of daily living
- Hospitalization more than three (3) days and/or cardiac event with recovery
- Hospitalization less than three (3) days and/or cardiac event with recovery
- Kidney event, new
- Kidney event, worsening of existing symptoms

APPEAL

- Medical panel to give final word on allowance of affidavit

- Special circumstances
- Special master to govern appeals committee

OPT OUT RIGHTS

- Claimants shall have the right to opt out
- If more than 30% of known claimants opt out, Defendant shall have the right to reject the settlement
- Defendants shall in no event pay in less than 30,000,000;
- Defendants shall in no event pay in more than 55,000,000 plus the common funds set out herein below.

COMMON FUND

- Defendants shall pay a lump sum of 12,000,000 to PSC for payment of common fund fees. These common fund fees shall be allocated and paid in accordance with the order of the presiding Judge Goodwin
- Defendants shall pay a lump sum of 3,000,000 to PSC for common expenses. These common expenses shall be allocated and paid in accordance with the order of presiding Judge Goodwin
- Defendants shall pay the costs of the claims facility's work and class notice

TIMING

- As soon as the parties sign agreement, suspend deadlines; seek court approval; shall apply for schedule for:
 - Creation of claims facility/appointment of Special Master
 - Creation of claims submission forms and form of underlying documents and release forms
 - Objectors
 - Special master will receive claims submissions/review to set out eligibility and assign a point value in accordance with settlement agreement
 - Special master will set base values for agreed upon categories of claims at a number that will allow compensation within the minimum and maximum values set out in the settlement.
 - Claims period shall be open for a period deemed sufficient by Judge Goodwin to capture all prospective claimants.
 - Compensation in two waves---first will be 60% of expected payout; second will be adjusted higher or lower to conform to the maximum or minimum levels.

FEE CONTRACTS

- There shall be no adjustment to fee contracts of individual cases.
- There shall be no assessment order on the settling cases.